

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSEPH MUSUMECI,

Plaintiff,

-against-

MTD PRODUCTS INC., MTD PRODUCTS LTD.,  
MTD HOLDINGS INC., MTD LLC, and  
HOME DEPOT USA, INC.

Defendants.  
-----X

Docket No. 07 CV 7535

ANSWER

(Jury Trial Demanded)

(J. Karas, J.Yanthis)

Defendant, Home Depot, USA Inc. ("Home Depot"), by its attorneys, Lynch Rowin LLP, as and for its answer to plaintiff's Complaint, states as follows:

**JURISDICTION AND VENUE**

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5.
6. Denies the allegations in paragraph 6, except admits that Home Depot is a Delaware corporation, with a principal place of business in Georgia, and authorized to do business in New York.
7. Denies the allegations in paragraph 7.
8. Denies the allegations in paragraph 8.

**FIRST CLAIM FOR RELIEF**

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20.

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22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22.

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26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38, except admits that Home Depot offers for retail sale, among other things, snow throwers.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41.

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107. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 107.

108. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 108.

109. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 109, except admits that Home Depot offers for retail sale, among other things, snow throwers.

110. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 110, except admits that Home Depot offers for retail sale, among other things, snow throwers.

111. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 111, except admits that Home Depot offers for retail sale, among other things, snow throwers.

112. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 112.

113. Denies the allegations in paragraph 113.

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162. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 162.

163. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 163, except admits that Home Depot offers for retail sale, among other things, snow throwers.

164. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 164.

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166. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 166.

167. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 167.

168. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 168, except admits that Home Depot offers for retail sale, among other things, snow throwers.

169. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 169.

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174. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 174.

175. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 175.

176. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 176, except admits that Home Depot offers for retail sale, among other things, snow throwers.

177. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 177.

178. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 178.

179. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 179.

180. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 180.

181. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 181, except admits that Home Depot offers for retail sale, among other things, snow throwers.

182. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 182.

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194. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 194.

195. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 195.

196. Denies the allegations in paragraph 196.

197. Denies the allegations in paragraph 197.

198. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 198.

199. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 199.

200. Denies the allegations in paragraph 200.

201. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 201.

202. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 202.

203. Denies the allegations in paragraph 203.

204. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 204.

205. Denies the allegations in paragraph 205.

206. Denies the allegations in paragraph 206.

207. Denies the allegations in paragraph 207.

208. Denies the allegations in paragraph 208.

209. Denies the allegations in paragraph 209.

210. Denies the allegations in paragraph 210.

211. Denies the allegations in paragraph 211.

212. Denies the allegations in paragraph 212.

213. Denies the allegations in paragraph 213.

214. Denies the allegations in paragraph 214.

215. Denies the allegations in paragraph 215.

216. Denies the allegations in paragraph 216.

**SECOND CLAIM FOR RELIEF**

217. Paragraphs 1 through 216 are re-alleged.

218. Denies the allegations in paragraph 218.

219. Denies the allegations in paragraph 219.

220. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 220.

221. Denies the allegations in paragraph 221.

222. Denies the allegations in paragraph 222.

223. Denies the allegations in paragraph 223.

224. Denies the allegations in paragraph 224.

225. Denies the allegations in paragraph 225.

### **THIRD CLAIM FOR RELIEF**

226. Paragraphs 1 through 225 are re-alleged.

227. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 227.

228. Denies the allegations in paragraph 228.

229. Denies the allegations in paragraph 229.

230. Denies the allegations in paragraph 230.

231. Denies the allegations in paragraph 231.

232. Denies the allegations in paragraph 232.

233. Denies the allegations in paragraph 233.

234. Denies the allegations in paragraph 234.

235. Denies the allegations in paragraph 235.

236. Denies the allegations in paragraph 236.

### **FIRST AFFIRMATIVE DEFENSE**

237. The complaint fails to state a claim upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

238. The amount of any damages otherwise recoverable by plaintiff should be diminished in the proportion which the culpable conduct attributable to plaintiff bears to the culpable conduct which caused the damages.

THIRD AFFIRMATIVE DEFENSE

239. The injuries, losses or damages alleged to have been suffered by plaintiff were caused or contributed to by the comparative fault, negligence and lack of care of the plaintiff or other individuals for whose conduct Home Depot is not responsible.

FOURTH AFFIRMATIVE DEFENSE

240. The injuries, losses or damages alleged to have been suffered by plaintiff were caused or contributed to by the fault, negligence and lack of care of persons and/or individuals whom plaintiff has not named as parties to this action and who, in accordance with the provisions of Article 16 of the New York State Civil Practice Law and Rules, are necessary parties who plaintiff should have named.

FIFTH AFFIRMATIVE DEFENSE

241. The injuries, losses or damages alleged to have been suffered by plaintiff were the result of plaintiff's assumption of the risk of such injuries, losses or damages.

SIXTH AFFIRMATIVE DEFENSE

242. Plaintiff's causes of action are barred in whole or in part by the applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

243. Plaintiff's claims are barred in whole or diminished in part in an amount fairly allocable to any party with which plaintiff has settled or may settle.

EIGHTH AFFIRMATIVE DEFENSE

244. The limitations on joint and several liability set forth in New York State CPLR Article 16 are applicable to this action.

NINTH AFFIRMATIVE DEFENSE

245. In the event that some or all of the plaintiff's alleged economic losses were or will be replaced or indemnified from collateral sources, any award for economic loss should be reduced thereby.

WHEREFORE, Defendant, Home Depot, demands judgment (a) dismissing the complaint, (b) awarding Home Depot costs and disbursements of this action, including attorneys fees, and (c) granting Home Depot such other relief as is just and proper.

Dated: New York, New York  
October 18, 2007

LYNCH ROWIN LLP

By: 

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